

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3852 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BHAKHARARAM KASBARAM BISNOY (PAWAR)

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 17th November, 1998 made by

the Commissioner of Police, Vadodara City, under the powers conferred upon him under Sub-section 2 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger' within the meaning of Section 2 (c) of the Act and his activities are alleged to be prejudicial to the maintenance of 'public order'. As many as 5 offences punishable under the Bombay Prohibition Act are registered against the petitioner. Two of the said offences are pending trial and the three offences registered in the year 1998 are pending investigation. In each of the cases, substantial quantity of English liquor was recovered from the petitioner. It is submitted that the subjective satisfaction of the detaining authority is based on the police papers of the aforesaid five offences registered against the petitioner and the statements made by the three witnesses. The names and other particulars of all the said three witnesses have been withheld in exercise of power conferred under section 9 (2) of the Act. It is contended that the privilege conferred under Section 9 (2) of the Act is wrongly invoked in respect of Witness No. 1. The statement given by the Witness No. 1 was not verified either by the detaining authority or by any other officer. In absence of such verification, the subjective satisfaction recorded in respect of the said witness no. 1 cannot be said to be based on the materials on record. The same is, therefore, vitiated. Further, such non-disclosure of the names and other particulars of the witness no. 1 has deprived the petitioner of his constitutional right to make an effective representation against the order of detention.

4. I do agree with the contention raised by Mr. Dave. It is not disputed that the statements of witness no. 1 has not been verified by the detaining authority or any other officer. In absence of such verification, the subjective satisfaction recorded by the detaining authority should be considered to be a mere lip-service and not based on the materials on record. Unless the detaining authority were satisfied on the basis of the materials on record that the identity of the witness was required to be withheld, the non-disclosure should vitiate the order of detention. Since the subjective satisfaction recorded by the detaining authority is found to be inadequate, the non-disclosure of the identity of the witness no.1 was not warranted, thereby the petitioner's right to make an effective representation has been infringed.

5. The petition is, allowed. The impugned order dated 17th November, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. Petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*